

Application No. 10/072,494
Docket No. A1-1431
Amendment dated October 4, 2004
Reply to Office Action of July 2, 2004

REMARKS

In the Office Action, the Examiner reviewed claims 1-40 of the above-identified US Patent Application, with the result that claims 1-3, 7-11, 21-23 and 27-31 were rejected under 35 USC §102 and/or §103, and claims 4-6, 12-20, 24-26, and 32-40 were allowed. In response, Applicant has amended the claims as set forth above. More particularly:

Independent claims 1 and 21 have been amended to incorporate limitations from their respective dependent claims 11 and 31, namely, the requirement for a delivering means/step by which elongate food products (32) are delivered to the passage (50) so as to be longitudinally aligned with the passage (50) so that the products (32) enter and travel downwardly through the passage (50) with a longitudinal axis of each product (32) substantially parallel to the passage (50).

Independent claims 1 and 21 have also been amended to require that the products (32) have diameters smaller than the distance between the oppositely-disposed first and second portions (48,62) of the passage (50). Support for these amendments can be found in Applicant's specification at paragraph [0025], as shown in Figure 6.

Independent claims 1 and 21 have been further amended to clarify that a force is applied to each product (32) as it travels downward through the passage (50) and engages the cutting means (34). Support for these amendments can be found in

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Applicant's Figure 6.¹

In view of their limitations being incorporated into their parent claims 1 and 21, claims 11 and 31 have been amended to recite a limitation that also finds support in Applicant's Figure 6.

Applicant believes that the above amendments do not present new matter. Favorable reconsideration and allowance of claims 1-40 are respectfully requested in view of the above amendments and the following remarks.

Rejection under 35 USC §102

Independent claims 1 and 21 and their dependent claims 2, 8, 22, and 28 were rejected under 35 USC §102(b) as being anticipated by Japanese patent JP363222038A to Kawakami. As noted above, independent claims 1 and 21 have been amended to incorporate the original limitations of their respective dependent claims 11 and 31, which were not subjected to the §102 rejection based on Kawakami. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 USC §102.

Rejections under 35 USC §103

Dependent claims 3, 7, 23 and 27 were rejected under 35 USC §103(a) as

¹ According to MPEP §2163 II.A.3(a), “drawings alone may provide a ‘written description’ of an invention as required by [35 USC §112, first paragraph],” and “[i]n those instances where a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification.” (Citations omitted).

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being unpatentable over Kawakami, independent claims 1 and 21 and their dependent claims 9, 11, 29 and 31 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 4,683,790 to Bittner in view of Kawakami, and dependent claims 10 and 30 were rejected under 35 USC §103(a) as being unpatentable over Bittner and Kawakami in further view of U.S. Patent No. 2,961,024 to Urschel et al. (Urschel). Applicant respectfully requests reconsideration of these rejections in view of the following comments.

Claims 3, 7, 23 and 27 were rejected as being obvious over Kawakami on the basis that it would be obvious to employ two jets (“gas streams”) in the cutting apparatus of Kawakami. However, Kawakami is limited to an apparatus that cuts a single strand 1 that is continuously delivered to a passage (“guide part”) 44 while the strand 1 is kept “in straightened state with blasting gas” discharged by a force-applying means 48a, 48, 48b, 50. Therefore, while it might be foreseeable that Kawakami’s apparatus could employ any number of gas streams to keep the strand 1 straight, nothing in Kawakami teaches or suggests other limitations of Applicant’s claims 1 and 21, such as the requirement to deliver individual products 32 to a passage 50 so that the longitudinal axis of each individual product 32 is substantially parallel to the passage 50, and a force is applied to each individual product 32. Furthermore, given the distance between Kawakami’s “delivery means” 54/56 and the guide part 44, it appears implausible that individual products could be delivered with Kawakami’s apparatus.

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For the above reasons, Applicant respectfully requests withdrawal of the first rejection under 35 USC §103.

Bittner was applied against claims 1, 9, 11, 21, 29 and 31 for disclosing a passage (“delivery channel”) 3 through which individual food products are delivered to a cutting means 12. Noting that “Bittner does not teach a means for applying a force,” the Examiner explained that “[i]t would have been obvious to provide means for applying a force in Bittner as taught by Kawakami in order to supply a downward pressure on any loose or stingy products that don’t initially get cut by the blades.” This argument appears to be made on the basis that Kawakami’s gas stream would be directed at the lowermost end of Bittner’s channel 3, similar to what is shown in Kawakami. However, in doing so Kawakami’s gas stream would not cause products within Bittner’s channel 3 to be “forced away from the second portion of the passage, toward the first portion of the passage, and into contact with the guide means during engagement with the cutting means,” as required by Applicant’s claims 1 and 21.

On the other hand, Applicant respectfully believes that any suggestion that one skilled in the art would be motivated to impact Kawakami’s gas stream against food products within Bittner’s channel 3 to force the products “away from the second portion of the passage, toward the first portion of the passage, and into contact with the guide means during engagement with the cutting means,” would be based on an unfounded presumption that Bittner’s apparatus would benefit from doing so, even though Bittner

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does not disclose or suggest that the food products fed through the channel 3 require any kind of alignment or positioning within the channel 3. For example, Bittner does not disclose that the diameter of the channel 3 is larger than the food products and would therefore benefit from Kawakami's force-applying gas stream. Instead, it appears to Applicant that one skilled in the art would reasonably presume that food products are aligned within Bittner's delivery channel 3 simply by properly sizing the channel 3 to have roughly the same diameter as the food products being fed through the channel 3.

Even if one were to modify Bittner's channel 3 based on the teachings of Kawakami, Kawakami does not provide any basis for a reasonable expectation of success for such a modification, as required by MPEP §2143.02². It is only through Applicant's teachings that one would be motivated to feed food products 32 through an oversized passage 50 and apply a force to align the individual food products 32 against one side of the passage 50 as required by Applicant's independent claims 1 and 21.

For all of the above reasons, Applicant also respectfully requests withdrawal of the second rejection under 35 USC §103.

² According to *In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991), "Where the claimed subject matter has been rejected as obvious in view of a combination of prior art references, a proper analysis under §103 requires, *inter alia*, consideration of two factors: (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process; and (2) whether the prior art would also have a reasonable expectation of success Both the suggestion and the reasonable expectation of success must be founded in the prior art, not in the Applicants'[s] disclosure." (Emphasis supplied).

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Finally, and in view of the arguments made above, Applicant respectfully believes that the combination of Bittner, Kawakami and Urschel does not obviate the subject matter of dependent claims 10 and 30, because Urschel was merely cited for disclosing cutting means that produce a v-shaped cut, and therefore does not make up for the lack of teachings noted for Kawakami and Bittner. Accordingly, Applicant also respectfully requests withdrawal of the third rejection under 35 USC §103.

Closing

In view of the above, Applicant believes that all rejections to his claims have been overcome, and that the claims define patentable novelty over all the references, alone or in combination, of record. It is therefore respectfully requested that this patent application be given favorable reconsideration.

Should the Examiner have any questions with respect to any matter now of record, Applicant's representative may be reached at (219) 462-4999.

Respectfully submitted,

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